

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

JUDGMENT

Raj Kumar vs. Smt. Pankaj Panwar

S.B.CIVIL SECOND APPEAL NO.372/2005
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED 5.9.2005
PASSED BY SHRI S.K. PARIK, DISTRICT
JUDGE, PALI IN APPEAL NO.50/2003.

DATE OF JUDGMENT :: 11.11.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. LR Calla, for the appellant.

Mr. NM Lodha, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree passed by the first appellate court dated 5.9.2005 by which the appellate court reversed the judgment and decree of the trial court dated 23.7.2003 and passed the decree in favour of the plaintiff for eviction of the appellant/defendant/tenant on the ground of personal bonafide necessity of the plaintiff.

Brief facts of the case are that the plaintiff landlady filed a suit for eviction of his tenant on the ground that her husband was doctor in service who retired and he wants to expand the clinic. By amendment of the plaint, further grounds were added and it is pleaded that the plaintiff's son is doctor and unemployed and that the plaintiff's daughter-in-law is also a doctor and they also want to join the clinic. During the pendency of the suit, the relationship of the plaintiff's son and his wife came to end because of divorce. Unfortunately, the plaintiff's son also died during pendency of litigation.

According to learned counsel for the appellants, the entire foundation of the suit is that the suit premises are required for the need of the plaintiff's son and the plaintiff's daughter-in-law. That need is no more surviving. The trial court dismissed the suit of the plaintiff but the appellate court, without holding that the finding recorded by the trial court is perverse, decided the appeal as a court of first instance and after re-appreciation of evidence that too perversely, reversed the finding recorded by the trial court. According to learned counsel for the appellant, the appellate court by this exceeded its jurisdiction.

Learned counsel for the appellant also submitted that the first appellate court after finding that the issue of partial eviction should have been decided before passing the decree of eviction, without remanding the matter and without there being any pleading or evidence, decided the

issue of partial eviction which is absolutely wrong.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

It is clear from the facts of the case that the first appellate court considered the fact of divorce between the plaintiff's son and his wife and also considered its effect over the need of the plaintiff. This is not in dispute that the plaintiff's husband is Doctor in Medicine and according to the defendant himself, he is having roaring practice. The appellate court observed that the shops which are in possession of the plaintiff's husband are not sufficient and the patients of plaintiff's husband used to sit outside the shop.

It appears that the appellant is under the impression that simply because of end of the need of the plaintiff's son and his wife, the entire need of the plaintiff's husband has been affected adversely to the extent that he cannot expand his business. This Court is of the opinion that the first appellate court carefully considered all the aspects of the matter whereas the trial court failed to appreciate the fact that the clinic is running and the plaintiff's husband is doctor i.e. M.D. (Medicine) and having good practice, therefore, it cannot be said that the conclusion drawn by the first appellate court about the need of the plaintiff's husband can be measured to such an

extent that it became doubtful that one shop in question will be in excess of need of the plaintiff's husband.

In view of the above, the first appellate court has not committed any error of fact or law.

Learned counsel for the appellant also submitted that the first appellate court committed serious error of law in deciding the issue no.5 against the defendant. It appears that the defendant submitted counter claim before the trial court for getting reduction in rent from Rs.900/- to Rs.700/-. According to the defendant, the property was taken on rent on 1.12.1988 at the rent of Rs.700/- per month. Thereafter, a new rent deed was executed on 1.1.1994 permitting rent to be Rs.900/- per month. The defendant submitted that the defendant is entitled to get the rent reduced because the rent is excessive. Learned counsel for the appellant submits that the rent as in the year 1965 is standard rent and the property if let out after the year 1975, the first rent is standard rent as per the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. In view of the above, the plaintiff is not entitled to recover the rent. According to learned counsel for the appellant, the finding recorded by the first appellate court for fixation of standard rent is contrary to law.

I also considered this submission of learned counsel for the appellant.

It appears from the finding recorded by the first

appellate court that the property was let out in the year 1981 and thereafter, the defendant voluntarily increased the rent from Rs.700/- to Rs.900/- and till the suit for eviction was filed, the defendant had no objection and he was paying rent at the rate of Rs.900/- per month.

In view of the above, I do not find that the first appellate court committed any error of law or any error of fact in passing the impugned judgment and decree.

No substantial question of law is involved in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that since the present premises are commercial premises, therefore, the appellant may be given some reasonable time to vacate the same.

Looking to the totality of the facts, it will be just and proper to permit the appellant to occupy the premises for some time more to wind up his business.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month that he shall not sublet or part with the property in question and shall hand over the vacant possession to the landlady by or before 31.12.2006 and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlady, the decree under

challenge shall not be executed till 1.1.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy as decreed by the first appellate court. In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

S.Phophaliya